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Serial No. 10/608,254

1

2002P18305US01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Mary Balogh
Filed : June 27, 2003
For : SYSTEM FOR PROCESSING UNPAID HEALTHCARE
CLAIMS
Serial No. : 10/608,254
Priority Date : November 4, 2002

REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 C.F.R. 1.47(b)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

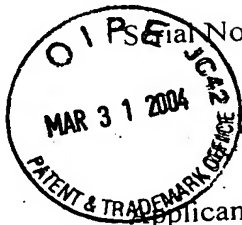
A petition filed on 26 January 2004 under 37 CFR 1.47(b) was refused because of 1) The petition lacks any acceptable oath or declaration in compliance with §§ 115 and 116 MPEP 409.03(b) and 2) the petition lacks a statement that the filing is necessary to prevent irreparable damage or to preserve the rights of the parties MPEP 409.03(g).

This is a response to "Decision Refusing Status under 37 CFR 1.47(b)." Attached is an executed Declaration and Power of Attorney in compliance with 35 USC §§ 115 and 116 and proof of irreparable damage.

In response to this refusal Applicant submits a declaration executed by a company officer (Secretary of Siemens Medical Solutions Health Services) as assignee signing on behalf of the inventor as agent for the non-signing inventor. Applicant also submits the following statement as proof of irreparable damages and to preserve the right of the parties.

STATEMENT CONCERNING IRREPARABLE DAMAGE

Siemens Medical Solutions Health Services has expended resources both in company assets (including computer resources) and in salary to Mary Balogh to develop the technology that is the subject of the patent filing. Without the protection of a patent filing the company will lose its right to the patent protection of the developed technology laying it open to be used by competitors who have not invested in developing this technology. This will mean the investment made will be substantially devalued and undermine the company position in a competitive



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PETITION UNDER 37 C.F.R. 1.47(b)
INVENTOR REFUSES TO SIGN

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby petition the United States Patent and Trademark Office to accept the above-identified patent application without an executed Declaration from the sole inventor.

Please charge the required fee of one hundred thirty dollars (\$130.00), pursuant to 37 CFR 1.17(h), for filing this Petition to the Commissioner to Deposit Account 19-2179.

This Petition under 37 C.F.R. 1.47(b), is submitted by Siemens Medical Solutions Health Services Corporation (hereinafter, Petitioner) which owns a proprietary interest in the above-identified United States Patent Application and, after diligent effort, has been unable to obtain the signature of Ms. Mary Balogh (the sole Inventor for the above application). The Petitioner further requests that the United States Patent and Trademark Office accept the above-identified patent application without an executed Declaration from the sole Inventor, Ms. Mary Balogh, as after diligent efforts as outlined below, Petitioner has been unable to obtain the signature of Ms. Mary Balogh on the Declaration form.

A response to the Notice of Missing Parts of Nonprovisional Application filed under 37 CFR 1.53(b) dated September 23, 2003 along with a request for a two-month extension, ending January 23, 2004 is being filed with this petition. Exhibits are also submitted with this petition in support of Petitioner's claim that the Inventor refuses to sign the Declaration.

Petitioner submits that, in view of the request for two month extension of time and the attached Certificate of Mailing, this Petition is timely.

The last known address for Ms. Mary Balogh is:

6301 Grant Street
Hollywood, FL 33024

In support of this petition, Applicants have attached a letter prepared by Ms. Ann Strong, Counsel for Petitioner and sent via Federal Express Tracking No. 638249986739 to Mary Balogh dated October 10, 2003. Accompanying this letter were the subject U.S. Patent Application, a Declaration to be executed by the Inventor and an Assignment also to be executed by the Inventor. A copy of this letter, as well as a copy of the unsigned Declaration and the Assignment are submitted herewith as Exhibit A.

The letter, U.S. Patent Application, Declaration and Assignment were shipped via Federal Express Tracking No. 638249986739 to Mary Balogh at the above listed address by Mr. Dean Miller, an employee of Petitioner on October 15, 2003. The above documents were delivered to and received by Mary Balogh on October 17, 2003 as evidenced by the Federal Express Tracking Record delivery information attached herewith as Exhibit B. This tracking record clearly shows that M. Balogh signed for and was in possession of the above documents as of October 17, 2003.

As required by 37 C.F.R. 1.47(b) and MPEP section 409.03(b)(C) Exhibits A and B are submitted as proof that diligent effort was made to present original copies of the above U.S. Patent Application, the Declaration and the Assignment to Mary Balogh to be executed thereby and that these documents were received by Mary Balogh.

Thereafter, it was determined that Mary Balogh refused to sign the Declaration and Assignment as evidenced by the series of emails submitted herewith as Exhibit C. The details of the emails are as follows (read from the last page forward):

On January 7, 2004, Alex Burke, Intellectual Property Counsel of Petitioner sent an email to both Mary Balogh and Robert Haskell, Supervisor to Mary Balogh during her employment with Petitioner, asking Mr. Haskell to notify Ms. Balogh as to the amount of financial compensation she is entitled upon issue of the above U.S. Patent Application.

On January 7, 2004, Mr. Haskell replied to Mr. Burke with a copy sent to Mary Balogh stating that Ms. Balogh would receive \$1000.00 as part of her inventor award.

Ms. Balogh responded to this email on January 7, 2004 that the above discussed financial award "won't even cover my shoe budget for the summer."

On January 8, 2004, Alex Burke sent another email to Ms. Balogh asking if Ms. Balogh was going to execute the Declaration and Assignment, and if so, when Mr. Burke would receive said executed Declaration and Assignment.

Ms. Balogh replied to Mr. Burke on January 8, 2004 stating "I am not" thereby indicating she refused to sign the Declaration and Assignment.

These emails are provided herewith as Exhibit C to show that the sole Inventor, Ms. Mary Balogh, refused to sign the Declaration and Assignment associated with the above U.S. Patent Application.

In order to show the Applicants proprietary interest in the above-identified invention, a copy of an Employment Agreement signed by Ms. Mary Balogh on December 3, 2001 is attached as Exhibit D. A Provisional United States Patent Application Serial No. 60/423,471 from which the subject application claims the benefit of was filed in the United States Patent and Trademark Office on November 4, 2002. This date is during the period of employment of Ms. Balogh with the Petitioner. According to section 7.0 of the Employment Agreement entitled, Ownership of Work Product, "All 'work'....shall be considered 'work made for hire'...and that Siemens is and shall be the sole owner of all rights therein". Thus, as the invention described in the subject patent application was conceived during the term of employment of Mary Balogh with Petitioner, it is respectfully submitted that the Petitioner has a proprietary interest in the subject United States Patent Application and granting of this petition is necessary in order to preserve the rights of the Petitioner.

I, Alexander J. Burke, I.P. Counsel for Petitioner, am authorized to submit this Petition on behalf of Petitioner.

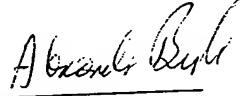
In view of the above remarks and attached exhibits, it is thus respectfully submitted that this petition complies fully with the requirements of 37 CFR 1.47(b) by including:

- a) payment of the petition fee under 37 C.F.R. 1.17(i);
- b) a statement of the last known address of Ms. Balogh, the sole inventor refusing to sign the Declaration and Assignment;
- c) evidence of diligent efforts to reach Ms. Balogh;
- d) evidence of Ms. Balogh's refusal to sign both the Declaration and Assignment; and
- e) Petitioner's demonstrated proprietary interest in the above U.S. Patent Application.

No additional fee is believed due. However, if an additional fee is due, please charge the fee to Deposit Account 19-2179.

Respectfully submitted,

By:


Alexander J. Burke
Reg. No. 40, 425

Siemens Corporation
Intellectual Property Dept.
180 Wood Ave. South
Iselin, NJ 08830
Tel: (732) 321 - 3023
Fax: (732) 321 - 3030

Dated: January 19, 2004